

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 75 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JITENDRA CHHETULAL JAIN

Versus

PRATAPBHAI PUNJSINGH ISRANI

Appearance:

1. Criminal Appeal No. 75 of 1987
MR JIVANLAL G SHAH for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
MR KT DAVE, APP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/2002

ORAL JUDGEMENT

1. The appellant has been convicted by learned
Special Judge and City Sessions Judge, Court No.7,
Ahmedabad, for offences punishable under Sections 3 and 7

of the Essential Commodities Act in Special Case No.26 of 1986, by judgment and order dated the 31st December, 1986. He has been sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/- and, in default, to undergo simple imprisonment for one month.

2. The accused was tried for the charges of having sold kerosene without maintaining record. He was also charged to have not maintained stock register properly and not indicated opening stock of November 30, 1984, and displaying incorrect stock on the board. He was also charged to have failed in filing required return for the months of September and October, 1984 and, thereby, having committed breach of Clause 16 and 17 of the Gujarat Essential Articles (Licensing, Regulation and Stock Declaration) Order 1981. He pleaded not guilty to the charge and was, therefore, tried. The learned Special Judge, ultimately, came to a conclusion that there is no evidence regarding irregular sale of kerosene or non-filing of return for the months of September and October, 1984. He, however, came to a conclusion that the accused did not maintain the account of the sale of kerosene as required under condition No.5 of the licence and failed to show the correct opening stock on the board displayed in the shop and, thereby, committed breach of Clause 16 of the said order.

3. It would be appropriate to note, at this stage, that the State has not preferred any appeal against the finding of the learned Special Judge and the State has failed to prove the irregular sale of kerosene and non-filing of return for the months of September and October, 1984. The accused has preferred this appeal against conviction and sentence.

4. At the time of hearing on earlier occasion, learned Advocate, Mr. Shah, appearing for the appellant, after arguing for a while on merits, submitted that the benefit of Section 4 of the Probation of Offenders Act, 1958 may be extended to the appellant and, this Court, vide order dated August 3, 2001, had called for a report of the Probation Officer, Ahmedabad, which has been received by this Court. Mr. Shah does not challenge the conviction and sentence part, but prays for grant of benefit under the Probation of Offenders Act. This Court has examined the report received from the Chief Officer, Probation of Offenders Act, Ahmedabad, received with a communication dated the 14th August, 2001. The report says that the appellant has a religious background and his conduct in the society as well is good and has a

tendency of being a helping hand. He owns about 35 trucks and earns about 12 to 13 lakhs per annum. It transpires that, he has family responsibility as well. The Probation Officer has opined that the benefit of Section 4 of the Probation of Offenders Act may be extended to the appellant.

5. Heard learned Additional Public Prosecutor, Mr. Dave and learned Advocate, Mr. Shah. Considering the nature of offence for which the appellant is convicted and considering the explanation given by him to the effect that he was not able to attend to his business because of his father's eye surgery around that time and the mistakes were, therefore, committed by his employees, it has to be noted that this is his first version from the very beginning when his statement was recorded by the Officer concerned on November 30, 1984, when they visited the shop and, therefore, it is not an after thought. Under the circumstances, this Court is inclined to grant benefit of Section 4 of the Probation of Offenders Act to the appellant while confirming the conviction as well as the sentence. The appellant be released on probation of good conduct for a period of one year on his executing a bond of Rs.10000/- with one surety of like amount on condition that he shall appear and receive sentence when called upon during the period of probation and, in the meantime, shall maintain to keep peace and be of good behaviour. The appeal is, accordingly, disposed of. The conviction is confirmed and the appellant is granted benefit of probation as aforesaid.

[A. L. DAVE, J.]

gt